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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CLAUDIA MARQUEZ-MORENO,)	No. C 04-2074 PJH
)	
Plaintiff,)	STIPULATION AND [PROPOSED]
)	ORDER OF COMPROMISE
v.)	SETTLEMENT
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

1 IT IS HEREBY STIPULATED by and between the parties, after full and open
2 discussion, that the above-captioned action brought pursuant to the Federal Tort Claims Act be
3 (the "Action") be settled and compromised on the following terms:

4 1. Defendant United States of America (the "United States") shall pay to Plaintiff Claudia
5 Marquez-Moreno ("Plaintiff") and her counsel, McColl & McColloch, the sum of \$125,000.
6 The parties agree that this amount of \$125,000 is in exchange for Plaintiff releasing and
7 dismissing all claims for compensatory and special damages, emotional distress damages, past
8 and future health care expenses, back pay, front pay, interest, attorneys' fees, costs, restitution,
9 and any other form of legal or equitable recovery relating to or arising out of the incident
10 between Plaintiff and Federal Bureau of Prisons ("BOP") former employee Carlos Rodarte on
11 January 26, 2002, and/or any other acts, omissions, or events occurring while Plaintiff was in the
12 custody of the BOP. The parties understand that this amount includes full satisfaction of all
13 claims for attorney's fees and costs arising out of all stages of litigation, including, but not
14 limited to, the processing of the Plaintiff's administrative and district court complaints in
15 connection with the Action.

16 2. Plaintiff will accept the terms described in paragraph 1 in full settlement and satisfaction
17 of any and all claims and demands which she, her successors or assignees may now have or
18 hereafter acquire against the United States, the BOP, Carlos Rodarte, and/or any of their past and
19 present officials, agents, employees, attorneys, insurers, successors and/or assigns (collectively
20 the "Released Parties").

21 3. In consideration of this Agreement and the payment of the foregoing amount thereunder,
22 Plaintiff agrees that upon the Court signing the Order below, her counsel will execute and return
23 to the United States' counsel a Stipulation for Dismissal with prejudice of this entire Action
24 consistent with the terms of this Agreement. The United States' counsel agrees not to file the
25 Stipulation for Dismissal until she is notified that Plaintiff's counsel has received the settlement
26 amount set forth in paragraph 1 above.

27 4. Plaintiff agrees to cooperate with the United States in connection with taking whatever
28 steps are necessary to obtain the dismissal with prejudice of any pending administrative

1 complaints or charges against the Released Parties. Plaintiff agrees that she has not filed and
2 will not file any other charges, complaints, lawsuits, or other claims against the Released Parties
3 that relate to or arise out of the incident between Plaintiff and Federal Bureau of Prisons
4 ("BOP") former employee Carlos Rodarte on January 26, 2002, and/or any other acts, omissions,
5 or events occurring while Plaintiff was in the custody of the BOP.

6 5. Plaintiff hereby releases and forever discharges the Released Parties from any and all
7 obligations, damages, liabilities, actions, causes of actions, claims and demands of any kind and
8 nature whatsoever, whether suspected or unsuspected, at law or in equity, or known or unknown,
9 that relate to or arise out of the incident between Plaintiff and Federal Bureau of Prisons
10 ("BOP") former employee Carlos Rodarte on January 26, 2002, and/or any other acts, omissions,
11 or events occurring while Plaintiff was in the custody of the BOP.

12 6. The provisions of California Civil Code Section 1542 are set forth below:

13 "A general release does not extend to claims which the creditor does not know or
14 suspect to exist in his favor at the time of executing the release, which if known
15 by him must have materially affected his settlement with the debtor."

16 Plaintiff has been informed of the statutory language of Civil Code Section 1542, and fully
17 understanding the same, nevertheless elects to waive the benefits of any and all rights she may
18 have pursuant to the provision of that statute and any similar provision of federal or Texas law.
19 Plaintiff understands that, if the facts concerning the claims released in this Agreement and the
20 liability of the government for damages for such claims are found hereinafter to be other than or
21 different from the facts now believed by them to be true, this Agreement shall be and remain
22 effective notwithstanding such material difference.

23 7. This Agreement may be pled as a full and complete defense to any subsequent action or
24 other proceeding involving any person or party that arises out of the claims released and
25 discharged herein.

26 8. This Agreement is a compromise settlement of disputed claims and demands, which
27 settlement does not constitute an admission of liability or fault on the part of Defendants, the
28 Released Parties on account of the events described in Plaintiff's complaints in this Action.

1 9. If any insurance carrier, hospital, doctor, medical facility, or other entity, has asserted or
2 asserts in the future any claim(s), liabilities, damages, interest(s), or lien(s) of any kind and
3 nature whatsoever arising out of the incident between Plaintiff and Federal Bureau of Prisons
4 (“BOP”) former employee Carlos Rodarte on January 26, 2002, any other acts, omissions, or
5 events occurring while Plaintiff was in the custody of the BOP, this Action, and/or the settlement
6 of this Action, Plaintiff shall be solely responsible for paying any such claim(s), liabilities,
7 damages, interests, or liens, and shall indemnify and hold harmless the Released Parties from any
8 liability incurred for such claim(s), liabilities, interests, damages, or liens.

9 10. If any withholding or income tax liability is imposed upon Plaintiff based on payment of
10 the settlement sum received herein, Plaintiff shall be solely responsible for paying any such
11 determined liability from any government agency thereof. Plaintiff will indemnify and hold
12 harmless the Released Parties from any liability incurred from any government agency arising
13 out of any failure by Plaintiff to pay for any liability she might incur from any government
14 agency. Plaintiff acknowledges that the Released Parties have made no representations as to any
15 tax liability she may incur as a result of this settlement.

16 11. Plaintiff has been informed that payment may take up to thirty days to process from the
17 date the Court signs the Order set forth below. In order to ensure that payment is received within
18 this time frame, Plaintiff agrees that the settlement amount set forth in paragraph 1 above may be
19 electronically transferred to the trust account of her counsel, McColl & McColloch, and that her
20 counsel will immediately provide the trust account name, routing number, bank account number,
21 and bank name to the United States’ counsel upon Plaintiff signing this Agreement. The United
22 States’ counsel agrees that upon the Court signing the Order set forth below, she will
23 immediately complete and submit by overnight delivery to the Department of Treasury Judgment
24 Fund all forms necessary request that the settlement amount set forth in paragraph 1 above be
25 paid to the trust account of Plaintiff’s counsel within 30 days.

26 12. Plaintiff acknowledges and agrees that she has thoroughly reviewed the entire
27 Agreement, has discussed its terms with her attorney, and understands its provisions.

28 13. The parties agree that should any dispute arise with respect to the implementation of the

terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue her original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the Agreement in district court. The parties agree that the district court will retain jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

14. Each party hereby stipulates that she/it is fully aware of and understands all of the terms of the Agreement and the legal consequences thereof. It is acknowledged that the parties hereto have mutually participated in the preparation of this Agreement, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or his/its attorney.

15. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provision shall not in any way be affected or impaired thereby.

16. This instrument shall constitute the entire Agreement between the parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties hereto. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.

Dated: October 10, 2005

/s/
CLAUDIA MARQUEZ-MORENO
Plaintiff

KEVIN V. RYAN
United States Attorney

Dated: October 11, 2005

/s/
JULIE A. ARBUCKLE
Assistant United States Attorney
Attorneys for Defendant United States of America

Dated: October 7, 2005

Approved and Agreed by:

/s/
Arch C. McColl, III (Bar No. 13431800)
Lead Attorney for Plaintiff Claudia Marquez-Moreno

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 10/11/05



PHYLLIS J. HAMILTON
United States District Judge